> Thus, it seems to us that there is no escape from the logic that inasmuch as section 364(e) provides for the consequences of the reversal or modification of an order under section 364(d) when an order has not been stayed pending appeal, it is impossible to conclude that section 364(e) in itself requires that an appeal be dismissed if a stay is not obtained. After all, neither [debtor] or anyone else can explain how there can be a 'reversal or modification' of an order, if the appeal from the order has been dismissed.

Id. at 559.

For these reasons, the Third and Ninth Circuits are also in conflict, emphasizing the need for certiorari in this case.

CONCLUSION

The circuit decisions are rather clearly split on the important issues discussed herein. Accordingly, the Petitioner respectfully requests that the petition for certiorari be granted.

DATED: February 9, 2006

Respectfully submitted,

DAVID R. WEINSTEIN
Counsel of Record
SHARON Z. WEISS
JACQUELYN H. CHOI
WEINSTEIN, EISEN & WEISS LLP
1925 Century Park East
Suite 1150
Los Angeles, CA 90067
(310) 203-9393
Attorneys for Petitioner
Weinstein, Eisen & Weiss LLP,
Administrative Creditor